

APPENDIX

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*In The United States District Court  
For The District of Maryland*

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*Civil Action No. 15756*

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*Lemoine Cree and Maria Cree, his wife, James W. Prescott,  
Norma Shelton, Andrew F. Euston, Jr. and  
Dr. Herbert F. Seversmith*

*v.*

*Irving Machiz, District Director of Internal Revenue  
for the District of Maryland*

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ORDER

(Filed August 1, 1967)

It is hereby ORDERED this 1st day of August 1967, by the United States District Court for the District of Maryland, that the motion of the defendant to dismiss the third amended complaint and to dissolve the three-judge court be and is hereby denied, without prejudice.

SIMON E. SOBELOFF,  
United States Circuit Judge.

ROSZEL C. THOMSEN,  
Chief Judge,  
United States District Court.

R. DORSEY WATKINS,  
United States District Judge.

True Copy — Test:

WILFRED W. BUTSCHKY,  
Clerk.

By DOLORES A. NAGRA,  
Deputy Clerk.

## DATA BEARING UPON RELATIVE INTERESTS, STATE AND FEDERAL TAXPAYERS, 1922 AND 1960

### *Interest of Federal Taxpayers — 1922*

The population of the continental United States in 1922 was 110,055,000. Historical Statistics of the United States, Colonial Times to 1957 (U.S. Dep. of Commerce, Bureau of the Census, 1960) p. 8. The 1922 volume of receipts of the federal government was \$4,109,104,000 (Id., p. 711) and the expenditures \$3,372,608,000 (Id., p. 718). The average of receipts and expenditures was approximately \$3,750,000,000 which divided by the population gives approximately a volume of flow of \$34.07 *per capita*.

### *Interest of State Taxpayers — 1922*

According to the Department of Commerce, Bureau of the Census, Financial Statistics of the States, 1922 (United States Government Printing Office, 1924) the per capita revenue receipt and governmental cost payments for the wealthier states were as follows:

	<i>Receipts</i>	<i>Costs</i>
California	16.56	19.71
New Jersey	14.53	14.67
New York	13.36	13.21
Pennsylvania	10.28	9.81

See Financial Statistics of the States, 1922, *supra*, Table 5.

From the foregoing, it can be seen that the per capita expenditure and income of federal governmental funds was substantially higher in respect to the population of the United States in 1922 than the per capita figure of state expenditures and income in respect to state population of the most wealthy and populous states.

### *Interest of Federal Taxpayers — 1960*

The 1960 population of the continental United States was 178,464,236. Historical Statistics of the United States,

Colonial Times to 1957, (U.S. Dept. of Commerce, Bureau of the Census, 1960) 1962 Supplement, p. 1. The total general revenues of the government amounted to \$77,233,385,000. This works out to a per capita figure of more than \$420 per person as of 1960.

### *Interest of State Taxpayers — 1960*

The New York state population figure for the 1960 census was 16,782,304. This was the largest population of any state that year. The 1960 budget figures for New York were \$3,303,310,000 revenue and \$3,317,205,000 expenditures Bureau of the Census, U.S. Dept. of Commerce, Compendium of State Government Finances in 1960, Table 3, Summary of Financial Aggregates by States, p. 11. (1961)

The per capita ratio works out to approximately \$190.00. The figures for the other states are comparable. Thus, New Jersey with a population of 6,066,782 had revenues of \$811,011,000 and expenditures of \$698,699,000. California, with a population of 15,717,204 had revenues of \$3,752,919,000 and expenditures of \$3,050,525,000. Pennsylvania with a population of 11,319,366 had revenues of \$2,065,941,000 and expenditures of \$2,131,883,000.

### *Conclusion*

Thus it appears that when *Frothingham* was decided, the per capita interest of the federal citizenry in the federal treasury's activities was one and a half to three times that of the interest of the citizenry of the richest and most populous states in their own treasuries; and in 1960 the interest of the federal citizenry on a per capita basis was more than twice that of the interest of citizens of the wealthiest and most populous states. The factual assumptions of *Frothingham* were demonstrably incorrect in its day and are still incorrect. A per capita ratio in the neighborhood of much less than \$10.00 in the case of one of the less wealthy and populous states was sufficient to support a state taxpayer's suit in 1922, while a ratio in excess of \$420.00 would be insufficient to support a federal taxpayer's suit today if *Frothingham* is to be followed.